IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3245 OF 2002

IN

FIRST APPEAL NO.984 OF 2002

The state of Maharashtra. ...Applicant.

V/s

Shri Rustom B.Joshi & Ors. ...Respondents.

WITH

CIVIL APPLICATION NO.887 OF 2003.

IN

FIRST APPEAL NO.984 OF 2002.

Nasik Municipal Corporation ... Applicant.

V/s.

1.Shri. Rustom Burzor Joshi since deceased through L.Rs. & Ors. ... Respondents.

Shri. R.V.More, advocate for the applicant.

Shri. A.J.Ahuja, advocate for the respondents No.1a to 1d, 2a to 2c & 4 to 6.

Shri. K.K.Tated, AGP for State.

CORAM : S.B.MHASE &
D.B.BHOSALE,JJ

DATE: FEBRUARY 1, 2005.

P.C. :

1. Heard the learned counsel for the parties.

2. Shri. Ranjit More, the learned counsel

for the applicant-Nasik Municipal Corporation makes a statement that within 8 weeks from today the entire decretal amount as per the award of the reference court will be deposited in this Court. The learned counsel for the respondents submits that in the event of such deposit, amount be released in favour of the respondents on their furnishing bank guarantee of a nationalised bank. Shri. R.V. More, learned counsel for the Nasik Municipal Corporation submits that there is an exorbitant price given by the Trial Court i.e. price has been raised seven times than the amount of the award passed by the Collector. Therefore, he submits that in any eventuality more than 50% of amount of the award shall not be released even on furnishing bank guarantee of a nationalised bank. Under the given circumstances, after going through the Judgment in land reference, we also find that one sale deed has been considered and the market price has been raised by seven times by the trial court, and prima facie we find that there will be variation in the amount of compensation. We have equally noted that the trial court has also not awarded interest on the decretal amount and cross-objection has been filed. Taking into consideration overall view of

the matter, we are inclined to release 50% of the decretal amount on furnishing continuous operating bank guarantee till the disposal of this appeal. Therefore, we pass following order.

ORDER

(a) The appellant shall deposit the decretal amount within a period of 8 weeks and on such deposit of decretal amount, the stay as prayed in prayer clause 3(b) shall operate in favour of the appellant.

(b) If such amount is deposited by the appellant as directed, respondents are at liberty to withdraw 50% of the said amount on furnishing continuous operating bank guarantee till the final disposal of appeal and 15 days thereafter of a nationalised Bank. Amount shall be paid only to respondents-claimants personally by cheque or Demand draft.

(c) Office is hereby directed to deposit remaining 50% amount in any nationalised bank initially for a period

of 3 years and if appeal is not disposed of within that period, office shall go on continuously depositing the same till the final disposal of this appeal on year to year basis.

3. Both the civil applications are disposed of accordingly.

(D.B.BHOSALE,J) **(S.B.MHASE,J)**

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